

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

CHASSITY THOMPSON ADEWOPO
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

LAMONT PERKINS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0609-CR-832
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G17-0601-FD-7883

May 17, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Lamont Perkins appeals his conviction for Criminal Recklessness as a class D felony¹ following a bench trial. On direct appeal, Perkins presents the following restated issue for review: Did the State present sufficient evidence to rebut his claim of self-defense?

We affirm.

The facts most favorable to the judgment reveal that on November 24, 2005, Perkins's girlfriend, Ruth Nance, was helping her friend, Diana Rush, carry groceries into Rush's house. After Rush and Nance entered the house, Perkins walked in and "pushed past" Rush to get to Nance. *Transcript* at 7. Perkins went up to Nance and "started pushing her around" with his hands. *Id.* Perkins pushed Nance near Rush's bedroom, and Nance called out for help. As Nance was "laying [sic] on her back . . . with [Perkins] over her," Perkins started "stabbing in [Nance's] face" with "[s]ome type of knife." *Id.* at 9, 11. Rush went to call 911, and Perkins left the house. When the police arrived at Rush's house, they found Nance, who had blood on her face, neck, and clothes and was "very hysterical." *Id.* at 17.

The State charged Perkins with criminal recklessness as a class D felony, residential entry, a class D felony, and battery as a class A misdemeanor. During Perkins's bench trial, he argued that he stabbed Nance in self-defense. Specifically, Perkins testified that he went into Rush's house to confront Nance about some money and

¹ Ind. Code Ann. § 35-42-2-2 (West, PREMISE through 2006 2nd Regular Sess.).

that Nance “threw that fingernail file and she scratched [him] across the nose” and also struck him with the nail file by his temple. *Id.* at 34. Perkins then “tackled” Nance, “took the thing from her” and “cut her” with the nail file “more than once.” *Id.* at 35, 37. The trial court found Perkins guilty of criminal recklessness and battery and not guilty of residential entry. When sentencing Perkins, the trial court vacated the battery conviction due to double jeopardy concerns and sentenced Perkins to three years for his criminal recklessness conviction. Perkins now appeals.

Perkins contends the State failed to present sufficient evidence to disprove his self-defense claim. We review a challenge to the sufficiency of the evidence to rebut a claim of self-defense using the same standard as that used for any claim of insufficient evidence. *Pinkston v. State*, 821 N.E.2d 830 (Ind. Ct. App. 2004), *trans. denied*. In so doing, we neither reweigh the evidence nor judge the witnesses’ credibility. *Id.* The verdict will not be disturbed if there is sufficient evidence of probative value to support it. *Id.*

A valid claim of self-defense is a legal justification for an otherwise criminal act. *Id.*; *see also* Ind. Code Ann. § 35-41-3-2(a) (West, PREMISE through 2006 2nd Regular Sess.). To prevail on such a claim, the defendant must show he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. *Pinkston v. State*, 821 N.E.2d 830. The amount of force that an individual may use to protect himself must be proportionate to the urgency of the situation. *Id.* When a person uses more force than is reasonably necessary under the circumstances, the right of self-defense is extinguished.

Id. When a claim of self-defense is raised and supported by the evidence, the State bears the burden of negating at least one of the necessary elements. *Id.* The State may satisfy its burden by either rebutting the defense directly or relying on the sufficiency of evidence in its case-in-chief. *Id.*

Perkins argues “[t]he evidence presented was insufficient to prove that Mr. Perkins was criminally reckless when he accidentally cut Ms. Nance while defending himself during an argument.” *Appellant’s Brief* at 5. In support of his self-defense claim, Perkins relies solely on his own testimony. During the bench trial, Perkins testified that he and Nance were arguing about money, that Nance “threw that fingernail file and she scratched [him] across the nose” and struck him by his temple, and that he “tackled” Nance, “took the thing from her” and “cut her with it” “more than once.” *Transcript* at 34-35, 37.

Even assuming *arguendo* Perkins’s testimony established a *prima facie* claim of self-defense, the State presented sufficient evidence to rebut Perkins’s claim. Rush testified that Perkins came into her house and “started pushing [Nance] around” with his hands before he stabbed Nance and that Nance was “laying [sic] on her back . . . with [Perkins] over her,” when Perkins started “stabbing in [Nance’s] face” with “[s]ome type of knife.” *Id.* at 7, 9, 11. Thus, the State presented evidence that negated the elements that Perkins did not provoke, instigate, or willingly participate in the violence and had a reasonable fear of death or great bodily harm. Moreover, the sole evidence offered in support of Perkins’s self-defense claim is his own testimony, which reveals that he tackled Nance, removed the nail file from her, and then proceeded to stab the unarmed

Nance several times with the file. Thus, any claim of self-defense that Perkins may have had was extinguished when he used more force than was reasonably necessary under the circumstances. The trial judge, after listening to all of the evidence presented by both parties, observing the witnesses' demeanor, and judging their credibility, rejected Perkins's self-defense claim. We decline Perkins's request to reweigh the evidence, and conclude there is sufficient evidence of probative value to support the verdict. *See, e.g., Porter v. State*, 543 N.E.2d 390 (Ind. 1989) (noting that although the victim had initially struck the defendant, the degree of force exerted by the defendant exceeded the bounds justifiable to defend herself where she stabbed the victim three times while he was restrained and unarmed).

Affirmed.

BAKER, C.J., and CRONE, J., concur.